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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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No. 66302-0-I

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION ONE

MATTHEW SILVA,

Appellant,

v.

DEBORAH HOLLY,

Respondent.

APPELLANT'S AMENDED OPENING BRIEF

Matthew G. Silva, pro se
WDOC 957176
Stafford Creek Corr. Ctr.
191 Constantine Way
Aberdeen, WA 98520
(360) 537-1993 (CC3 Tully)

- ORIGINAL -

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in considering matters outside the pleadings in adjudicating the defense' CR 12(c) motion for judgment on the pleadings.

2. The trial court erred in dismissing all claims based on the doctrine of collateral estoppel.

3. The trial court erred in dismissing Count Four of the Amended Complaint - the retaliation claim - based on a collateral estoppel defense that was never raised.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the decision on respondent's CR 12(c) motion had to be limited to matters set forth in the pleadings. ASSIGNMENT OF ERROR NO. 1.

2. Whether the defense met its burden of presenting admissible evidence of a previous federal decision it claimed as an estoppel. ASSIGNMENT OF ERROR NO. 2.

3. Whether the defense met its burden of proving identity of issues between this case and the previous federal decision it claimed as an estoppel. ASSIGNMENT OF ERROR NO. 2.

4. Whether the defense met its burden of proving that application of collateral estoppel would not work an injustice in this case. ASSIGNMENT OF ERROR NO. 2.

5. Whether the retaliation claim asserted in Count Four of the Amended Complaint can be dismissed where no motion for dismissal was made and collateral estoppel was never asserted. ASSIGNMENT OF ERROR NO. 3.

III. STATEMENT OF THE CASE

1. Substantive Facts. Appellant Matthew Silva sued respondent Deborah Holly, a prison grievance coordinator, for censoring the content of three (3) separate official grievances he filed at the Monroe Correctional Complex (MCC). Clerk's Papers (CP) 40-44. He also sued Ms. Holly for retaliating against him by issuing an infraction when he had her served with this lawsuit. CP 44-45.

In Count One, Ms. Holly allegedly told Mr. Silva he had to re-write Grievance No. 09-14416 because it included "multiple, unrelated issues". CP 41. In fact, the actions complained of were all related. Id. In Count Two, Mr. Silva alleged that Ms. Holly refused to process Grievance No. 09-15060 because it cited Revised Code of Washington (RCW). CP 42. In Count Three, he says Ms. Holly refused to process Grievance No. 09-15180 because it included more than one issue. Count Four claimed that Ms. Holly retaliated by infracting Mr. Silva for suing her. CP 44-45. The defense never filed an answer to the Amended Complaint. The trial court dismissed all Counts. CP 4.

2. Procedural History. On July 20, 2009, Mr. Silva filed and served Ms. Holly with the initial Complaint. CP 64-69; Washington State General Rule (GR) 3.1. Ms. Holly filed an answer on about August 20, 2009. CP 58-63. In her answer, Ms. Holly explicitly admitted that she refused to process Mr. Silva's grievances unless he changed their content. CP 59 at lines 20-24; CP 60 at lines 5-10 and 17-20.

On about July 15, 2010, the defense filed a motion for judgment on the pleadings. CP 47-57. Although a variety of legal theories were asserted, the only theory at issue in this appeal is the claim that the doctrine of collateral estoppel warrants dismissal of this action in toto. CP 50-52. Specifically, the defense asserted that a previous federal decision in a different lawsuit estops Mr. Silva's claims here. *Id.*

Mr. Silva responded that collateral estoppel cannot be applied here because the defense failed to present any admissible evidence of the prior proceeding. CP 34-36. The record below shows that all the defense presented as "evidence" in support of its collateral estoppel argument were references to unpublished Westlaw citations. CP 35-36. He also presented an Amended Complaint and asked the trial court for leave to amend. CP 40-46.

The defense replied without addressing Mr. Silva's arguments about the lack of evidence to support an estoppel. CP 26-27. After a hearing, the trial court granted Mr. Silva's motion to amend and dismissed the entire case "[o]n the basis of collateral estoppel". CP 4.

Mr. Silva filed a motion for reconsideration and pointed out the complete lack of proof on the elements of collateral estoppel. CP 18-21. He also argued that application of collateral estoppel would work an injustice and that Count Four of the Amended Complaint was not even within the scope of Ms. Holly's CR 12(c) motion. CP 21-22. The defense responded without addressing any of the merits of Mr. Silva's collateral estoppel arguments. CP 7-8 (NOTE: CP 7-15 from the Clerk's Papers appears to be erroneous. Attached and incorporated as Appendix 1 is a true copy of the document from Mr. Silva's file that should be SUB 42 from the superior court clerk's file. It only appears to be six (6) pages long so Mr. Silva has referred to it herein as CP 7-12).

Significantly, Ms. Holly admitted that Count Four of the Amended Complaint was not within the scope of her motion for judgment on the pleadings. CP 8. Still, the trial court denied the motion for reconsideration without comment. CP 3.

On November 18, 2010, Mr. Silva filed and served a timely notice of appeal. CP 1-2. At the direction of this court's clerk, Mr. Silva filed and served a supplemental notice of appeal on March 24, 2011. See Appendix 2, SUPPLEMENTAL NOTICE OF APPEAL WITH PROOF OF SERVICE. This timely opening brief follows.

IV. ARGUMENT

1. THE DISMISSAL ORDER MUST BE REVERSED BECAUSE THE TRIAL COURT CONSIDERED MATTERS OUTSIDE THE PLEADINGS WITHOUT TREATING RESPONDENT'S CR 12(c) MOTION AS A SUMMARY JUDGMENT MOTION UNDER CR 56.

A motion for judgment on the pleadings addresses the adequacy of the pleadings and relies only on matters alleged in them. Washington Civil Procedure Deskbook, Second Edition and 2006 Supplement, § 12.6(2). Questions of law are appropriate for determination under CR 12(c). Gen Trading Co. v. Cudahy Corp., 22 Wn.App 278, 283 n.1 (1978), aff'd, 92 Wn.2d 956 (1979). In a motion for judgment on the pleadings, the facts in the complaint must be accepted as true. Bailey v. Town of Forks, 38 Wn.App 656, 657 (1984), rev'd on other grounds, 108 Wn.2d 262 (1987).

A motion to dismiss made after an answer has been filed will be considered as a motion for judgment on the pleadings. Meyer v. Dempcy, 48 Wn.App 798 (1987). On appeal, the legal standard is whether or not the nonmoving party could prove any set of facts that would entitle the

nonmoving party to relief under the complaint. Roth v. Bell, 24 Wn.App 92 (1979).

According to CR 12(c), a motion for judgment on the pleadings may only be filed "after the pleadings are closed". The rule mandates in pertinent part that:

If, on a motion for judgment on the pleadings, matters outside the record are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

CR 56(c) requires 28 days notice prior to any hearing on a summary judgment motion. This time would have allowed Mr. Silva to obtain and present extra-record evidence to support his opposition to collateral estoppel in this case. *Id.* However, because Ms. Holly's CR 12(c) motion was not treated as one for summary judgment under CR 56, matters outside the pleadings had to be excluded by the trial court as a matter of law. CR 12(c). On the silent record that should have been, then, the collateral estoppel defense would have failed. Because the trial court erred in considering matters outside the pleadings, however, the dismissal order should be reversed.

2. BECAUSE THE DEFENSE FAILED TO PLEAD COLLATERAL ESTOPPEL AS AN AFFIRMATIVE DEFENSE, AND BECAUSE NO EVIDENCE WAS PRESENTED FROM THE RECORD OF THE PRIOR FEDERAL PROCEEDING, THE RESPONDENT FAILED TO MEET ITS BURDEN OF PLEADING AND PROVING AN ESTOPPEL DEFENSE.

Whether or not collateral estoppel applies to preclude relitigation of an issue is a question of law that is reviewed de novo. State v. Vasquez, 109 Wn.App 310, 314 (2001). Collateral estoppel, or "issue preclusion", prevents litigation of an issue after a party estopped has had a full and fair opportunity to present its case. Barr v. Day, 124 Wn.2d 318, 324-25 (1994). Collateral estoppel is the applicable preclusive principle when "the subsequent suit involves a different claim but the same issue". Phillip A. Trautman, Claim And Issue Preclusion In Civil Litigation In Washington State, 60 Wash.L.Rev. 805 (1985).

The proponent of the application of collateral estoppel in a particular case bears the burden of proving four (4) elements: (1) the issue previously decided is identical to the current issue; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom the doctrine is asserted was party to or in privity with a party to the previous case; and (4) application of the doctrine will not work an injustice. Thompson v. DOL, 138 Wn.2d 783, 790 (1999).

Collateral estoppel is an affirmative defense and the party asserting the doctrine bears the burden of proof. State Farm Mutual v. Avery, 114 Wn.App 299, 304 (2002). Failure of proof on any one element is fatal to the proponent's collateral estoppel defense. Lemond v. DOL, 143 Wn.App 797 (2008).

In the context of a collateral estoppel defense, "'[c]ompetent evidence' is synonymous with relevant and admissible evidence". Lemond, supra. "The record of the prior action must be before the trial court so that it may determine if the doctrine precludes relitigation of the issue in question". Beagles v. Seattle First Nat'l Bank, 25 Wn.App 925, 932 (1980). Certified copies of the necessary documents from the prior proceeding must be before the trial court. Id at 931-32. The Washington State Supreme Court explained:

In the case at bar, the trial court filed a memorandum opinion, referring not only to the pleadings in the prior action, which were pleaded by respondent and admitted by appellants, but to the memorandum opinion filed by the trial judge. As no evidence was introduced in the case at bar, the records in the prior action, save as admitted by the pleadings herein, were not properly before the court.

In the case of Pacific Iron & Steel Works v. Goerig, 55 Wash. 149, this court held that, to be available as res judicata, the record in the prior action must be pleaded and introduced as evidence ...

The trial court, then, in ruling upon the questions of law presented, considered matters which were not properly before it, no evidence having been introduced. ...The trial court erred in granting Cater's motion for judgment on the pleadings.

Bodeneck v. Cater's Motor Freight System, Inc., 198 Wash.
21, 29-30 (1939).

In the instant case, respondent failed to plead collateral estoppel as an affirmative defense. CP 61. Further, no certified copies of the complaint, answer and final judgment from the alleged prior federal action were offered by the defense. Rather, respondent merely referenced three (3) vague orders by their unpublished Westlaw citations. Mr. Silva could not obtain these unpublished orders, nor did he agree that they were accurate or before the trial court. CP 35-36. Respondent's failure to plead collateral estoppel as an affirmative defense, coupled with the undisputable failure to produce any "admissible evidence" in support, warrants reversal of the trial court and denial of the motion for judgment on the pleadings.

3. EVEN IF REFERENCE TO THE UNPUBLISHED WESTLAW CITATIONS WAS SUFFICIENT TO PLACE THE COLLATERAL ESTOPPEL DEFENSE BEFORE THE COURT, RESPONDENT FAILED TO PROVE IDENTITY OF ISSUES SO THE DEFENSE SHOULD HAVE BEEN REJECTED.

Collateral estoppel requires that the issue in the prior adjudication be identical with the one at hand. McDaniels v. Carlson, 108 Wn.2d 299, 305 (1987), citing Luisi Truck Lines, Inc. v. State Utilities & Transportation Comm'n, 72 Wn.2d 887, 894 (1967). Where an issue arises in

two entirely different contexts, there is no identity of issues to satisfy the requirements of collateral estoppel.

McDaniels at 305.

It is axiomatic that for collateral estoppel by judgment to be applicable, that the facts or issues claimed to be conclusive on the parties in the second action were actually and necessarily litigated and determined in the prior action.

...It is also the rule that issues not material to the controversy, although determined, do not become res adjudicata.

...Neither the doctrine of res judicata nor collateral estoppel are intended to deny a litigant of his day in court. The purpose of both doctrines is only to prevent relitigation of that which has previously been litigated. It is a rule of rest.

...The party asserting either doctrine has the burden of proof to show that the determinative issue was litigated in the former proceedings.

Luisi, 72 Wn.2d at 118 (citations omitted - emphasis in original).

Here, respondent argued to the trial court that the United States District Court previously decided that Mr. Silva had no claim "that a grievance coordinator 'did not process his grievances'". CP 50, line 16. According to respondent, the issue was whether Mr. Silva had "a constitutional right to a prison grievance system". CP 50, lines 18-19. The problem is that in the instant case, Mr. Silva never asserted "a constitutional right to a prison grievance system". Rather, he claimed three (3) causes of action under the First Amendment. These claims are based on

on Mr. Silva's constitutional right to freedom from content-based censorship and prior restraints on free speech. CP 41-44. Notably, respondent did not produce any evidence that the alleged prior federal judgment adjudicated a First Amendment claim based on censorship or prior restraint on free speech.

This court has recognized that prison officials cannot dictate grievance content to prisoners except in very limited circumstances. In re PRP of Parmelee, 115 Wn.App 273 (2003). The issue is controlled by the United States Supreme Court's Turner v. Safely, 482 U.S. 78, 89-90 (1987) analysis. See Parmelee, supra; then see McCabe v. Arave, 827 F.2d 634, 637 (9th 1987); see also Turner, 482 U.S. at 90 (legitimate penological interest must be neutral, without regard to content of expression). Moreover, article 1, section 5 of the Washington State Constitution categorically prohibits prior restraints on constitutionally-protected speech. Voters Educ. Comm. v. Public Disclosure Comm'n., 161 Wn.2d 470, 493-94 (2007); CP 46, §§ 3.6 and 3.7 (seeking injunctive and other relief).

Respondent also relied on three (3) federal opinions for the proposition that Mr. Silva has no right to a prison grievance system. See CP 53, citing Mann v. Adams, 855 F.2d 639 (9th 1988); Stewart v. Block, 938 F.Supp 582 (C.D. Cal 1996); and Hoover v. Watson, 886 F.Supp 410 (D.Del. 1995).

The court will note, however, that none of these cases deal with the issue presented in the instant case, i.e. whether content-based censorship of a prisoner's grievance violates the First Amendment. CP 41-44. None of the federal cases cited by respondent address the First Amendment at all, nor do any of them engage in the Turner analysis that controls the issue.

The record shows that respondent failed to prove identity of issues. This failure of proof is fatal to respondent's collateral estoppel defense. Lemond, 143 Wn.App 797 (2008); Thompson, 138 Wn.2d at 790. Therefore, the dismissal order (CP 4-6) should be reversed.

4. BECAUSE RESPONDENT FAILED TO PROVE THAT APPLICATION OF COLLATERAL ESTOPPEL WOULD NOT WORK AN INJUSTICE, THE DEFENSE SHOULD FAIL.

Mr. Silva argued to the trial court that application of collateral estoppel would work an injustice. CP 21-22. He asserted that even if the alleged federal judgment adjudicated the current issue, reliance on it would work an injustice because it was erroneously decided. *Id.* Respondent never addressed this argument. CP 7-12. This court should also note that no evidence was ever presented that Mr. Silva's federal appeal was decided on the merits. This does not support a finding that he had a "full and fair opportunity" to litigate. No proof was offered that application of collateral estoppel would not work an injustice, which supports reversal of the dismissal order.

5. RESPONDENT AGREED THAT THE FIRST AMENDED COMPLAINT INCLUDED A RETALIATION CLAIM THAT WAS NOT PRECLUDED UNDER COLLATERAL ESTOPPEL. THEREFORE, WHEN THE TRIAL COURT DISMISSED OVER RESPONDENT'S CONCESSION, IT ERRED AND REVERSAL SHOULD RESULT.

The trial court granted Mr. Silva's request to amend the complaint. CP 4, line 23. The First Amended Complaint included a retaliation claim. CP 44-45. Respondent never moved to dismiss the retaliation claim and conceded as much. CP 8. Therefore, it was obvious error for the trial court to dismiss based on a collateral estoppel defense that respondent agrees it never presented. Count Four should be reinstated.

V. CONCLUSION

The dismissal order (CP 4-6) should be reversed, respondent's motion for judgment on the pleadings should be denied, the case should be remanded for further proceedings, and Mr. Silva should be awarded his costs, fees and statutory attorney's fees on appeal. RAP 14.1.

RESPECTFULLY submitted this 8th day of September,
2011.



MATTHEW SILVA, appellant

PROOF OF SERVICE BY MAIL

The undersigned declares under penalty of perjury that an original and a true copy of APPELLANT'S OPENING BRIEF was mailed, postage prepaid as "Legal Mail" this day, to: Clerk, Division One Court of Appeals, 600 University St, Seattle, WA 98101 (original) and Ohad Lowy, AAG, Attorney General of Washington, P.O. Box 40116, Olympia, WA 98504.



MATTHEW SILVA, declarant

Appendix 1

1 **B. Plaintiff's Motion Should Be Dismissed As He Has Failed To Meet The**
2 **Requirements Of CR 59**

3 As Plaintiff's motion for reconsideration does not meet the requirements of CR 59,
4 it should be denied. A motion for reconsideration does not provide a litigant with a second
5 bite of the apple. A motion may be granted if, among other reasons, the litigant produces
6 newly discovered evidence, or if material evidence was available but not produced before
7 the motion was granted, that the litigant made diligent though unsuccessful attempts to
8 obtain it. CR 59(a). Here, none of Plaintiff's arguments are based on newly discovered
9 evidence or Plaintiff's unsuccessful attempt to produce evidence. Plaintiff's arguments are
10 essentially the same arguments he made at the hearing. The cases Plaintiff cites, in
11 addition to being inapplicable to the facts in this case, are not recently decided cases that
12 were not available to him during his argument. Again, the arguments raised in this motion
13 were raised in both oral argument and the written materials previously provided to the Court.
14 Plaintiff's arguments do not meet the criteria for reconsideration pursuant to CR 59, and
15 therefore should be denied.

16 **C. Plaintiffs' Count 4 Was Not Argued Under Collateral Estoppel As Plaintiff**
17 **Amended His Complaint After Defendant Filed Her Motion**

18 At the motion to dismiss hearing, the Court granted Plaintiff's motion to shorten time
19 and motion to amend the complaint. Plaintiff filed his motion to amend the complaint after the
20 Defendant filed her motion to dismiss. Plaintiff states that count 4 was never addressed in the
21 motion to dismiss. That is true, as when Defendant Holly filed her motion to dismiss,
22 Plaintiff's complaint did not contain count 4. Defendant was disadvantaged by the filing of the
23 amended complaint just a couple of days before the hearing, followed by the admittance of the
24 complaint the day of the hearing. Defendant did not have an opportunity to address count 4.
25 Although Plaintiff's argument is without merit, Plaintiff is correct that collateral estoppel did
26 not apply. However, count 4 can be dismissed on other grounds.

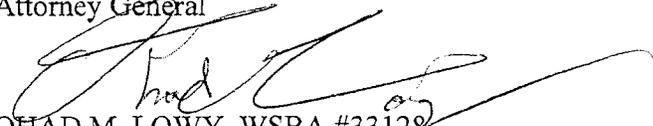
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II. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Plaintiff's motion for reconsideration be denied.

RESPECTFULLY SUBMITTED this 23 day of September, 2010.

ROBERT M. MCKENNA
Attorney General



CHAD M. LOWY, WSBA #33128
Assistant Attorney General
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

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CERTIFICATE OF SERVICE

I certify that I served a copy of RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION on all parties or their counsel of record on the date below as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by: SCCC staff

TO:

MATTHEW SILVA # 957176
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520

EXECUTED this 23rd day of September, 2010, at Olympia, Washington.

Katrina Toal
KATRINA TOAL

EXHIBIT 1



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

September 8, 2010

Matthew Silva # 957176
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen WA 98520

Re: Matthew Silva v. Deborah Holly,
Snohomish County Superior Court No. 09-2-07612-8

Mr. Silva:

Enclosed is the order that Judge Wynne asked me to prepare in the above-referenced case from the August 30, 2010 telephonic hearing. By signing it, you are not agreeing with the Judge's ruling, just acknowledging that the order reflects the Judge's ruling. Please sign and return to me by September 22, 2010, in the enclosed envelope and I will present the order to Judge Wynne for signature and filing and ask that a copy be sent to you.

If I do not hear from you by September 22, 2010, I will be noting the order for a presentation hearing.

Sincerely,

OHAD M. LOWY
Assistant Attorney General

OML:klt

Enclosures

EXHIBIT 1

12

Appendix 2

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

MATTHEW G. SILVA,)	COA No. 66302-0-I
)	
Plaintiff,)	Snohomish County Superior
)	Court No. 09-2-07612-8
v.)	
)	SUPPLEMENTAL NOTICE
DEBORAH HOLLY,)	OF APPEAL WITH PROOF
)	OF SERVICE
Defendant.)	

TO: Clerk of the Court, and

TO: Ohad Lowy, Assistant Attorney General (AAG)

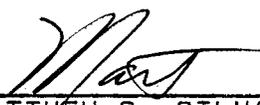
PLEASE TAKE NOTICE that the plaintiff, Matthew G. Silva, pro se, has already filed and served a timely notice of appeal in the above-entitled cause. Attached to that previously-filed notice of appeal was a true copy of the Order Denying Motion For Reconsideration, which was entered on October 19, 2010. At the direction of Division One of the Washington State Court of Appeals, Mr. Silva hereby supplements that previously-filed notice of appeal. See attached 3/17/10 letter from Johnson to Lowy / Silva.

Accordingly, attached and incorporated is a true copy of the ORDER GRANTING PLAINTIFF'S MOTION TO SHORTEN TIME AND TO AMEND COMPLAINT AND DISMISSING ACTION, entered on October 18, 2010. Mr. Silva supplements his notice of appeal to include notice that he is appealing the attached Order as well.

Declaration Of Service By Mail

The undersigned declares under penalty of perjury that originals of this notice were mailed, postage prepaid as "legal mail", this day to: Clerk, Division One Court of Appeals, 600 ~~University St., Seattle, WA 98101; Clerk, Snohomish County~~ Superior Court, 3000 Rockefeller Ave, Everett, WA 98201; [copy only] Ohad Lowy, AAG, Attorney General of Washington, P.O. Box 40116, Olympia, WA 98504.

SIGNED this 24th day of March, 2011, at Aberdeen, Washington.


MATTHEW G. SILVA, plaintiff
WDOC 957176 H6-A3
Stafford Creek Corr. Center
191 Constantine Way
Aberdeen, WA 98520
(206) 753-7039
wps1836@gmail.com

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

March 17, 2011

Ohad Michael Lowy
Attorney General's Office
PO Box 40116
Olympia, WA, 98504-0116

Matthew D. Silva / DOC #957176
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA, 98520

CASE #: 66302-0-I
Matthew G. Silva, App. vs. Deborah Holly, Resp.

Counsel:

The records before the Court indicate that proof of service of the notice of appeal and the order or judgment appealed from (Order of Dismissal with Prejudice dated October 18, 2010) is not of record as required by RAP 5.4(b) and RAP 5.3(a).

If the proof of service of the notice of appeal and order or judgment appealed from is not filed within 10 days, a court's motion to dismiss and/or impose sanctions in accordance with RAP 18.9 is set for Friday, April 8, 2011, at 10:30 a.m. The Court's motion will be stricken if the proof of service of the notice of appeal, order or judgment appealed from or a motion for extension of time is filed on or before March 28, 2011.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

hek

Filed in Open Court

Oct 18, 2010

SONYA KRASKI
COUNTY CLERK

By *[Signature]*
Deputy Clerk

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CL14218735

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

MATTHEW G. SILVA,
Plaintiff,
v.
DEBORAH HOLLY,
Defendant.

NO. 09-2-07612-8

ORDER GRANTING PLAINTIFF'S
MOTIONS TO SHORTEN TIME AND
TO AMEND COMPLAINT AND
DISMISSING ACTION

(Proposed)

THIS MATTER having come on for telephonic hearing on August 30, 2010, on Plaintiff's Motions to Shorten Time and to Amend Complaint, and Defendant's Motion for Judgment on the Pleadings and to Stay Discovery, MATTHEW SILVA, appearing pro se, and Defendant appearing by and through her attorney, OHAD M. LOWY, Assistant Attorney General, the Court, having considered Plaintiff's and Defendant's Motions, Responses and Replies, and having heard oral argument and considered the record and files herein and being fully advised; now therefore,

IT IS HEREBY ORDERED that

1. Plaintiff's motion to shorten time is GRANTED;
2. Plaintiff's motion to amend complaint is GRANTED;
3. *on the basis of collateral estoppel* *[Signature]*
~~For the reasons set forth in Defendant's Motion for Judgment on the Pleadings,~~

this matter is DISMISSED with prejudice.

CLOSED

ORDER GRANTING PLAINTIFF'S
MOTIONS TO SHORTEN TIME AND TO
AMEND COMPLAINT AND DISMISSING
ACTION NO. 09-2-07612-8

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
PO Box 40116
Olympia, WA 98504-0116
(360) 586-1445

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